STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal From the Michigan Court of Appeals

SILVER CREEK DRAIN DISTRICT,
a statutory body corporate,

Plaintiff/Appellee/Appellant,

Supreme Court Docket No. 119721

v

EXTRUSIONS DIVISION, INC.,
a Michigan corporation, and
AZZAR STORE EQUIPMENT, INC.,
a Michigan corporation,

Court of Appeals No. 216182
Kent County Circuit Court No. 94-2550-CC

Defendants/Appellants/Appellees.

Consolidated With

EXTRUSIONS DIVISION, INC.,
a Michigan corporation,

Court of Appeals No. 216644
Kent County Circuit Court No. 94-78727-CZ

Plaintiff

v

ORAL ARGUMENT REQUESTED

CITY OF GRAND RAPIDS,
a municipal corporation, and
KENT COUNTY DRAIN COMMISSIONER,
Jointly and Severally,

Defendants.
_____/

MICHIGAN MUNICIPAL LEAGUE'S AMICUS CURIAE BRIEF ON APPEAL

MILLER, CANFIELD, PADDOCK & STONE, PLC
Thomas C. Phillips (P 24113)
Clifford T. Flood (P37083)
James R. Lancaster, Jr. (P38567)
Attorneys for Intervening Appellant
Michigan Municipal League
One Michigan Avenue, Suite 900
Lansing, Michigan 48933
(517) 487-2070
Fax: (517) 374-6304

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DID THE COURT OF APPEALS ERR IN CONCLUDING THAT THE UNIFORM CONDEMNATION PROCEDURES ACT DOES NOT VEST MICHIGAN COURTS WITH THE AUTHORITY TO ACCOUNT FOR ESTIMATED REMEDIATION COSTS OF CONTAMINATED PROPERTY WHEN CALCULATING THE AMOUNT OF JUST COMPENSATION DUE TO A PROPERTY OWNER?

The Michigan Court of Appeals would answer this question "No."

Defendant/Appellee Extrusions Division, Inc. answers this question "No."

Plaintiff/Appellant Silver Creek Drain District answers this question "Yes."

INTRODUCTION

The Court of Appeals, in a case of first impression, has issued a published opinion holding that a public entity acquiring private property for a public purpose may not take into account preexisting environmental contamination when calculating the fair market value of the parcel. Its rationale is that no such authority exists in the Uniform Condemnation Procedures Act, MCL 213.51 et. seq. ("UCPA"). The panel held "We conclude that the UCPA does not vest courts with the authority to account for estimated remediation costs of contaminated property when calculating the amount of just compensation due a property owner." Silver Creek Drain Dist v Extrusions Division, Inc, 245 Mich App 556, 565 (2001).

The panel's decision is contrary to Article 10, § 2 of Michigan's Constitution, misreads the UCPA and confuses condemnation and environmental statutes. The Michigan Municipal League ("MML"), which represents in excess of 500 cities and villages across the state, is greatly concerned that the Court of Appeals' decision will be interpreted by trial courts across the state as prohibiting a municipality from considering the effect of environmental contamination on the fair market value of property being acquired by condemnation, even if it is shown that the contamination would dramatically reduce the fair market value of the parcel being acquired. The inevitable result is that municipalities will be discouraged from acquiring property necessary for public improvements. The error committed by the Court of Appeals is substantial and must be rectified by this Court.

STATEMENT OF FACTS

Intervening Amicus Curiae MML adopts and relies upon the Statement of Facts contained in Plaintiff/Appellant Silver Creek Drain District's Brief on Appeal.

ARGUMENT

I. THE DECISION OF THE COURT OF APPEALS CONTRAVENES THE MICHIGAN CONSTITUTION, WHICH AUTHORIZES A TAKING OF PRIVATE PROPERTY FOR PUBLIC PURPOSES UPON THE PAYMENT OF JUST COMPENSATION.

The Court of Appeals' decision in this case evidences a fundamental misunderstanding as to the origin of the "just compensation" requirement in Article 10, § 2 of the Michigan Constitution, and its relationship to the UCPA. Simply put, the Court of Appeals was wrong when it concluded that a grant of authority from the UCPA is necessary in order to allow consideration of environmental remediation costs when calculating just compensation. The proper measure of just compensation for a taking of private property is solely a judicial question. Art 10, § 2. Therefore, the Legislature may not enlarge or restrict the measure of just compensation in taking cases. K&K Construction, Inc v Dep't of Natural Resources, 217 Mich App 56; 551 NW2d 413 (1996); *rev'd on other grounds*, 456 Mich 570; 575 NW2d 531 (1998); *cert. den.* 119 S Ct 60; 525 US 819; 142 LEd2d 47.

The requirement for payment of just compensation when government takes private property arises directly from Article 10, § 2 of the Michigan Constitution, which states: "Private property shall not be taken for public use without just compensation therefor being first made or secured in a manner prescribed by law. Compensation shall be determined in proceedings in a court of record." Accordingly, the determination of what constitutes just compensation arises as a matter of constitutional law, and is ultimately committed to the discretion of this Court, which is solely responsible for interpreting the Constitution.

Moreover, Michigan Courts have repeatedly held that just compensation for a taking of private property is the property's fair market value. This is generally described as the amount a willing buyer would pay a willing seller. In practice, the parties to a condemnation action routinely consider a number of issues impacting a property's fair market value, including its highest and best use, zoning, location, subterranean geology, accessibility, and any number of additional issues. *See* SJ12d 90.05. There is no rational basis for arbitrarily excluding consideration of the affect on value due to environmental contamination. The Constitution mandates that just compensation be paid. This Court has consistently interpreted this to require payment of the "fair market value," i.e., what a willing buyer would pay a willing seller. It logically follows that courts may properly consider any factor that impacts the value of property – one such factor being whether the parcel is contaminated.

It follows from the analysis set forth above that the Court of Appeals erred in looking to the UCPA to determine whether there is authority to account for environmental contamination when determining just compensation. This is so because the UCPA (as its title implies) is a procedural statute. Only two sections of the UCPA address the manner in which the amount of just compensation is to be calculated. However, both sections merely codify matters addressed in judicial rulings predating the UCPA[1].

[1] UCPA Section 20(1), MCL 213.70(1) provides that a change in the fair market value before the date of filing which was "substantially due to the general knowledge of the imminence of the acquisition" is to be disregarded. MCL 213.70(1). Subsection (2), MCL 213.70(2), provides that the "general effects" of a project which are generally experienced in varying degrees by the general public or by property owners from whom no property is taken, should not be considered in determining just compensation. Both of these subsections codify principles established by case law decided prior to the enactment of the UCPA in 1980. *See* In re Elmwood Park Project Section 1, Group B, 376 Mich 311; 136 NW2d 896 (1965); Michigan State Highway Commissioners v L & L Concession Co, 31 Mich App 222; 187 NW2d 465 (1971).

Section 23(1), MCL 213.73(1) also provides some limitations on just compensation by requiring that the enhancement in value of the remainder be taken into consideration. MCL 213.73(1). This rule was authorized by judicial decisions predating enactment of the UCPA, holding that absent statutory authorization, benefits could not be taken into account in calculating just compensation. *See* State Highway Commissioner v Breisacher, 231 Mich 317; 204 NW2d 112 (1925); Plantenga v Grand Rapids Terminal R Co, 190 Mich 661; 157 NW 425 (1916). Beyond this, the UCPA is silent as to the manner in which just compensation is to be calculated.

Therefore, the Court of Appeals' conclusion that the UCPA does not vest courts with the authority to "account for estimated remediation costs of contaminated property when calculating the amount of just compensation due to a property owner," is obviously based on a false premise. Silver Creek, supra at 565. "The determination of value in each case...is not a matter of formula or artificial rule, but of sound judgment and discretion based upon the relevant facts in the particular case." State Highway Comm'r v Eilender, 362 Mich 697, 699; 108 NW2d 755 (1961).

In this case, a factual foundation was established to support the trial court's conclusion that a reasonably prudent purchaser of Extrusions' property would have taken into account the preexisting contamination. As of the date of taking (1994), such a purchaser would have become strictly liable for the preexisting contamination upon becoming the owner, regardless of its responsibility for causing the release of the contamination. Common sense dictates that a purchaser in 1994 would not have been willing to purchase Extrusions' property without some assurance that it would not be saddled with an open-ended liability for the clean up.[2] Obtaining MDEQ approval of a Type C Closure would have provided this assurance to a prospective purchaser. Therefore, this Court's ruling in Eilender would dictate that it was appropriate, and well within the Trial Court's discretion, to accept the opinion of the Drain District's experts as to the manner in which this defect in the property impacts its fair market value, and thus, the just compensation due to Extrusions.

II. THE COURT OF APPEALS CONFUSED THE QUESTIONS OF JUST COMPENSATION AND THE RECOVERY OF ENVIRONMENTAL REMEDIATION COSTS

The question of what constitutes just compensation for the taking of private property for a public improvement is different than the question of whether a property owner can or should be compelled to

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[2] The facts of this case demonstrate that risk. The good faith offer by Appellant was $211,300.00. The actual remediation costs exceeded the estimated fair market value of the property by tenfold. The fact that the Drain

undertake and pay for the cost of remediating environmentally contaminated property. The former is a constitutional inquiry that focuses on the amount a willing buyer would pay a willing seller. The latter is not a valuation question at all, but rather implicates the liability imposed by various environmental statutes. The sum that can be recovered in a cost recovery action is unrelated to the value of contaminated property. In fact, in certain situations, the sum that could be obtained in a cost recovery action may exceed the fair market value of the property once it is "clean".

Prior to the 1995 amendments to Part 201, the concept of appraising property in a condemnation action as "contaminated" was practically unheard of. The current owner of the property was almost always strictly liable for the existing contamination (subject to certain limited exceptions). Courts in a condemnation action are required to value property in a manner that disregards the fact that it is being acquired by condemnation; they are essentially to engage in the fiction of determining the price that a willing buyer and willing seller, under no compulsion to buy or sell, would agree to. Obviously, a willing buyer would always take into account the fact that it would become strictly liable for the preexisting contamination. This would typically be measured by the cost to fix the problem; i.e., remediate the contamination.[3] Therefore, the only method to account for the effect on value of the contamination was to deduct the remediation costs.

In 1994, when the Drain District made its good faith offer for the property, Extrusions was strictly liable for the preexisting contamination, even though it did not cause the contamination. Therefore, the Drain District could have sued Extrusions for the full amount of the clean up costs

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District actually expended approximately $2.3 million to remediate the contamination, illustrates the considerable risk involved in acquiring contaminated property prior to the 1995 amendments to Part 201.

[3] In fact, the Part 201 amendments were, in part, motivated by the concern that contaminated property was being "warehoused" because it was unmarketable due to the fear by prospective purchasers of the strict liability imposed by MERA. Once again, the facts of this case illustrate the problem. Assuming the accuracy of the estimates of the fair market value of the property as "clean", and the estimates of remediation costs, Extrusions property was arguably burdened with a liability exceeding its fair market value.

incurred, regardless of whether that amount exceeded the fair market value of the property if not contaminated. This changed in 1995 with the Part 201 amendments, which substantially changed the market for contaminated property. Suddenly, it was realistic to purchase contaminated property because the purchaser could obtain an exemption from liability by performing a Baseline Environmental Assessment ("BEA").[4] Further, owners of contaminated property, like Extrusions, were no longer liable for contamination they did not cause.[5] This change, of course, occurred after the Drain District had performed its appraisal and an environmental assessment of Extrusions' property, and after the Drain District had made its good faith offer and initiated this condemnation litigation.

The Part 201 Amendments placed the Drain District in a unique, but difficult situation. Extrusions was now a non-liable party and thus no longer the proper subject of a cost recovery action. Therefore, the Drain District could no longer justify withholding Extrusion's estimated just compensation in escrow. However, common sense (and the testimony of the parties' appraisers) suggested that the environmental contamination would still impact the value of the property. Consistent with this, the Drain District's experts and the Trial Court concluded that a reasonably prudent purchaser of Extrusions' property in 1994, would have insisted on a Type C Closure.[6] Both the Drain District and

[4] Section 26(1)(c) of Part 201, MCL 324.20126(1)(c), provides that a person purchasing contaminated property after June 5, 1995 can obtain an exemption from liability for pre-existing contamination it did not cause by performing a Baseline Environmental Assessment ("BEA"). A BEA is an evaluation of environmental conditions which exist on contaminated property at the time of purchase that reasonably defines the existing conditions so that, in the event of a subsequent release of contamination, the new release can be identified separate from or can be separated from the existing contamination.

[5] A person owning contaminated property on or before June 5, 1995 is only liable to clean up the contamination if it was "responsible for an activity causing a release". *See* Part 201, Section 26(1)(a) and (b), MCL 324.20126(1)(a) and (b).

[6] The Court should note that even after the Amendments to Part 201, a person purchasing contaminated property and performing a BEA (and thereby obtaining an exemption from liability for pre-existing contamination) still has certain obligations with respect to the preexisting contamination known as "Due Care" obligations. *See* Part 201, Section 7a, MCL 324.20107a. Section 7a generally requires an owner of contaminated property (including a non-liable Owner) to mitigate human exposure to, and to not exacerbate, the preexisting contamination.

Extrusions submitted to the Court their estimates of the cost of this closure.[7] Ultimately, the trial court concluded that the contamination would have a negative impact on the value of the property, and ruled accordingly.

Unfortunately, the Court of Appeals does not appear to appreciate the change that occurred due to the Part 201 Amendments. Instead, it relied upon an erroneous interpretation of the 1993 UCPA Amendments, by concluding: "The error in deducting environmental cleanup cost when determining just compensation is evident given that the amendments to the UCPA direct that the liability for such cost be determined by way of a separate cause of action." Silver Creek, supra at 565 (emphasis added).

This conclusion by the Court of Appeals clearly shows that it did not understand the impact of the 1995 Part 201 amendments, and the purpose of the provisions of the UCPA allowing estimated just compensation to be held in escrow as security for clean-up costs. *The UCPA escrow provisions simply do not apply in a situation like this: both the buyer and the seller of contaminated property would* ***not*** *be strictly liable for the contamination.* The UCPA provision allowing money to be held in escrow for anticipated environmental remediation costs is applicable only in situations where the current owner is strictly liable for the contamination. In such situations, a cost recovery action against the property owner is ***always*** available to the condemning agency. The provisions in the UCPA allowing for money to be held in escrow for environmental clean-up only apply where the property owner is liable for the clean-up; they do not apply to a situation like this, where the current owner is not liable.

[7] Again, though it is somewhat unclear how the parties' experts took into account the impact of the 1995 Part 201 amendments, arguably, the requirements of a Type C Closure are somewhat similar to the Section 7a Due Care requirements. Both require the owner or operator of contaminated property to use it in such a manner calculated to reduce the exposure of people to the remaining contamination.

III. THE COURT OF APPEALS' MISREAD THE 1993 AMENDMENTS TO UCPA SECTIONS 5, 6a AND 8 AS AFFECTING THE VALUATION OF PROPERTY.

In 1994 (the year when the Drain District made its offer to Extrusions) liability for contaminated property was governed by two statutes: the Michigan Environmental Response Act, then found at MCL 299.601 et. seq. (commonly known as "MERA" or "Act 307") and the federal law known as Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 USC § 9601, et. seq..

Section 12(1) of MERA, MCL 299.612(1) provided that three different classes of property owners were strictly, jointly and severally liable for the release of hazardous substances: (a) the current owner or operator of the property, (b) the owner or operator of the property at the time the release or disposal of the hazardous substance occurred, and (c) each owner or operator of the property since the time of release or disposal of the hazardous substance (i.e., interim owners).

As a result of this liability scheme, any person purchasing contaminated property at that time would, regardless of fault and subject to only limited exceptions, immediately become a liable party. The only way to cure this "defect" with respect to the contaminated property would be to clean up the contamination.

MERA authorized the State and private parties (including cities and other governmental entities) to recover from other liable parties remediation costs incurred. Section 12(2) defined the costs that were recoverable:

> (2) A person described in subsection (1) [i.e., liable parties] shall be liable for:
>
> (a) All costs of response activity lawfully incurred by the state [or a private party] relating to the selection and implementation of response activity under this act.
>
> (b) Any other necessary costs and response activity incurred by any other person consistent with rules relating to the

selection and implementation of response activity promulgated under this act.

(c) Damages for the full value of injury to, destruction of, or loss of natural resources, including reasonable costs of assessing injury, destruction, or loss resulting from the release.

Though the terms "cost recovery" or "cost recovery action" were not defined under Act 307, these terms are commonly used to describe actions to recover costs pursuant to § 12(2).[8]

In order to allow condemning agencies to address the potential clean-up liability imposed by MERA, in 1993 the Legislature amended the UCPA to allow all or some portion of the estimated just compensation escrowed at the outset of a condemnation lawsuit to be maintained in escrow as security for the environmental clean-up costs.. *See* 1993 PA 308. In summary, the relevant amendments include:

- Section 5(1) was amended to include a requirement that a condemning agency in its good faith offer " ... state whether the agency reserves or waives its rights to bring federal or state cost recovery actions against the present owner of the property arising out of a release of hazardous substances at the property and the agency's appraisal of just compensation for the property shall reflect such reservation or waiver." *See* MCL 213.55(1), sentence 3.

- Section 5(4) was amended to include a requirement that at the time a condemning agency files its complaint to acquire property by condemnation, the complaint must contain a statement of whether the agency "reserves or waives its right to bring federal or state cost recovery actions against the present owner of the property". *See* MCL 213.33(4)(e)(iv).

- Section 6a was added to the UCPA, dictating certain situations where the condemning agency could be required by the trial court to waive its right to bring a state or federal cost recovery claim against the property owner. Where a court orders a condemning agency to reverse its reservation of rights, the agency is required to submit to the owner a revised good faith offer. *See* MCL 213.56a(2).

[8] Though somewhat different from MERA, the provisions of CERCLA are substantially similar, and for the purpose of this case should be treated similarly.

- Section 8 was amended to provide that where the agency reserves its right to bring a cost recovery action against the property owner, any portion of the estimated just compensation that is escrowed at the time the condemnation action is filed[9] may be ordered by the court to remain in escrow as security for environmental remediation costs on the condemned parcel. However, the escrow must be limited to the "likely costs of remediation if the property were used for its highest and best use." *See* MCL 213.58(2).

Read together, these amendments do not dictate the manner in which property is appraised. Rather, they merely give the condemning agency the right to seek a Court order that will allow the agency to use the estimated just compensation as security to offset the anticipated cleanup costs if it chooses to pursue a cost recovery action against the current owner.

Furthermore, the only references to the valuation process in these amendments imply that the value of property may change depending upon whether the condemning agency will be pursuing cost recovery. UCPA Section 5(1), MCL 213.55(1), requires that the condemning agency's appraisal reflect the reservation or waiver of its right to bring a cost recovery action. UCPA Section 6a, MCL 213.56a, states that where a court orders a condemning agency to reverse its reservation, the agency must submit a revised good faith offer (presumably to reflect this reversal). These statutes do not dictate the manner in which the property will be appraised. However, they clearly reflect an assumption that if cost recovery can be obtained from the property owner (and the money used to make the property "clean"), it will have an affect on its fair market value; i.e., "clean" property will typically be worth more than "contaminated" property. Similarly, if cost recovery cannot be obtained from the current property owner, the risk posed by the pre-existing contamination will be taken into account in the determination of the fair market value of the property. Presumably, these provisions would prohibit a condemning

[9] Pursuant to UCPA Section 5, MCL 213.55, at the time a condemnation claim is filed, the condemning agency must escrow the full amount of its good faith offer (i.e., the amount the agency offered to the property owner prior to litigation) with a bank, trust company or title company in the business of handling real estate escrows, or with the state treasurer, municipal treasurer or county treasurer. The deposit is to be held and set aside for the benefit of the owners, distributed upon order of the court pursuant to Section 8. *See* MCL 213.55(5).

agency from offering a reduced value because property is contaminated, while simultaneously seeking cost recovery from the property owner.

IV. UNLESS IT IS OVERTURNED, THE DECISION OF THE COURT OF APPEALS WILL CAUSE GREAT CONFUSION AND RESULT IN INACCURATE VALUATIONS OF PROPERTY IN CONDEMNATION ACTIONS.

The decision of the Court of Appeals leaves public entities seeking to acquire property for a public improvement in the untenable position of having to ignore the environmental condition of a parcel of property that is sought for a public improvement. Effectively, the public entity has to ignore a condition of the property that, by all accounts, can have a dramatic impact on valuation. Such a result is neither required by the applicable statutes nor consistent with the constitutional requirement of just compensation. It may also stymie otherwise necessary public projects.

It is respectfully submitted that the Court of Appeals should have addressed the issue in a different manner. The MML contends that in the future, reading the UCPA and Part 201 consistently, there are three possible scenarios under which a condemning agency can address environmental contamination of property being acquired through condemnation.

First, where the current property owner is liable for the existing contamination, the condemning agency can waive its right to cost recovery, and value the property as contaminated. Under this scenario, the condemning agency would presumably rely upon the liability exemption it will obtain by performing a BEA (essentially accepting the property as contaminated), and adjust the fair market value of the property to the extent it is impacted by the potential Part 201 Section 7a "Due Care" Obligations that the agency must undertake.

Second, where the current property owner is liable for the existing contamination, the condemning agency can value the property as "clean" and pursue a separate cost recovery action. Under

this scenario, the condemning agency can value the property as "clean," but reserve its right to file a cost recovery action against the current property owner. At the time the condemnation action is filed, the condemning agency must concurrently file a separate cost recovery action against the property owner. It is unclear under the UCPA whether both the condemnation action and the cost recovery action would be tried in the same lawsuit. Nevertheless, the two actions would presumably to proceed concurrently. Only under this scenario would it be appropriate for the condemning agency to exercise its right to seek a Court order to maintain in escrow all of some portion of the good faith offer as security for the estimated environmental remediation expenses.

Third, where the current property owner was not responsible for an activity causing the release of the contamination, the condemning agency can simply value the property as "contaminated." Under this scenario, the condemning agency cannot bring a cost recovery action against the current property owner and therefore, presumably will waive its right to pursue cost recovery. Therefore, the appropriate course of action for the condemning agency is to value the property as "contaminated," taking into account the impact on the value of the Part 201 Section 7a Due Care Obligations.

These scenarios reflect the appropriate analysis that a condemning agency should undertake when contemplating the acquisition of contaminated property. This analysis is appropriate because it accurately reflects how a theoretical arms-length purchaser would analyze its potential liability for pre-existing contamination. Under each of these scenarios the determination of just compensation can appropriately take into account the impact of that pre-existing contamination will have on the future use of the property. In some situations, a purchaser will incur some response activity costs to fulfill the Part 201, Section 7a "Due Care" requirements; in many it will require none. In any event, contrary to the Court of Appeals conclusion in this case, a prudent purchaser will always analyze this cost. A condemning agency must be allowed to do the same.

Under the specific facts of this case, MML believes that the manner in which the parties' experts took into account the impact on value of the pre-existing contamination accurately reflects an appropriate methodology prior to the Part 201 Amendments. Because the UCPA mandates that property be valued as of the date the condemnation complaint is filed, (which in this case predated the 1995 Part 201 Amendments) as of June 1994 it was reasonable to assume that a prospective purchaser would have required a Type C closure, and deducted this expense from the purchase price. However, the intervening 1995 Part 201 Amendments left the Drain District in an usual situation not likely to occur again. Intervening Amicus Curiae Appellant asserts that it is imperative that this Court reverse the Court of Appeals' decision, and interpret the UCPA and Part 201 in a more appropriate manner, consistent with the provisions of Mich. Const. Article X, Section 2.

CONCLUSION

Independent of the UCPA, the Part 201 Amendments have significantly impacted the potential use and value of property throughout this state. This impact extends far beyond the context of condemnation law. Condemning agencies must be allowed to take into account this impact when determining just compensation due to a property owner. The UCPA really does not govern the manner in which just compensation is to be calculated in a condemnation action. Nevertheless, the Court of Appeals appears to believe it does; and erroneously concludes that the impact of environmental contamination on property value in the post-Part 201 Amendment world can only be considered by means of a separate cost recovery action.

Intervening Appellant MML requests that the Supreme Court reverse the Court of Appeals' decision, reinstate the trial court's decision, and clearly repudiate the conclusion reached by the Court of Appeals that UCPA does not vest courts with the authority to account for estimated remediation costs of contaminated property in calculating the amount of just compensation due to a property owner.

Certainly in some situations, certain remediation costs may be required of a prospective purchaser in order to comply with its Section 7a Due Care requirements. In some manner, a prospective purchaser would undoubtedly take into account such costs, as it would any other expense that it might incur in the purchase of property. The fact that the "damage" to the property is environmental contamination does not justify it being treated different than other factors that affect its value. If the Supreme Court fails to correct this erroneous reasoning by the Court of Appeals, it is inevitable that lower courts will arbitrarily exclude consideration of the environmental contamination from condemnation trials, thus putting condemning agencies in a significantly (and unjustifiably) disadvantaged position when purchasing property.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

June 25, 2002

By: _____

James R. Lancaster, Jr. (P38567)
Clifford T. Flood (P37083)
Attorneys for Michigan Municipal League
One Michigan Avenue, Suite 900
Lansing, MI 48933-1609
(517) 487-2070

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Jointly and Severally,

Defendants.
_____/

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss:
COUNTY OF INGHAM)

Jeri Clevenger, being first duly sworn, deposes and says that on the 25th day of June, 2002 she served two copies each of **MICHIGAN MUNICIPAL LEAGUE'S AMICUS CURIAE BRIEF ON APPEAL** upon:

Matthew Zimmerman Paul J. Greenwald Varnum, Riddering, Schmidt & Howlett LLP PO Box 352, Bridgewater Place Grand Rapids, MI 49501-0352	Douglas A. Dozeman Christian E. Myer Warner, Norcross & Judd, LLP 900 Old Kent Building, 111 Lyon Street, N.W. Grand Rapids, MI 49503
Patrick F. Isom Assistant Attorney General Transportation Division State of Michigan PO Box 30050 Lansing, MI 48909	Alan T. Ackerman Ackerman & Ackerman, PC 3001 W. Big Beaver Road, Ste. 508 Troy, MI 48084

by enclosing same in a sealed envelope addressed to the above individuals, with first-class postage fully prepaid thereon, and depositing same in the U.S. Mail at Lansing, Michigan

Jeri L. Clevenger

Jeri L. Clevenger

Sworn to and subscribed before me
this 25th day of June, 2002.

Susan A Monroe

SUSAN A. MONROE
Notary Public, Ingham County, MI
My Comm. Expires July 3, 2005

LALIB:115375.1\060519-00015